

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

BRICE PRICE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2:20-cv-00495-JPH-MJD
	)	
STATE OF INDIANA,	)	
	)	
Respondent.	)	

**Order to Show Cause**

Petitioner Brice Price filed the instant habeas petition pursuant to 28 U.S.C. § 2254 challenging his 2013 state-court conviction in cause number 49G01-1312-FA-079671 ("FA-79671") and 2019 state-court conviction in cause number 49G04-1901-F4-002026 ("F4-2026"). Both convictions arose out of Marion County Superior Court, Criminal Division 4.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."

**I. FA-79671**

A federal court may grant habeas relief only if the petitioner demonstrates that he is in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a) (1996). In an attempt to "curb delays, to prevent 'retrials' on federal habeas, and to give effect to state convictions to the extent possible under law," Congress revised several statutes governing federal habeas relief as part of the Antiterrorism and Effective Death Penalty Act (AEDPA). *Williams v. Taylor*, 529 U.S. 362, 404 (2000). "Under 28 U.S.C. § 2244(d)(1)(A), a state prisoner

seeking federal habeas relief has just one year after his conviction becomes final in state court to file his federal petition." *Gladney v. Pollard*, 799 F.3d 889, 894 (7th Cir. 2015). "The one-year clock is stopped, however, during the time the petitioner's 'properly filed' application for state postconviction relief 'is pending.'" *Day v. McDonough*, 547 U.S. 198, 201 (2006) (quoting 28 U.S.C. § 2244(d)(2)).

The chronological case summary in FA-79671<sup>1</sup> shows that Mr. Price pleaded guilty on February 21, 2014, and did not file an appeal. Accordingly, it appears any challenge to FA-79671 is untimely. Mr. Price shall have **through October 28, 2020**, in which to show cause why his challenge to his conviction in FA-79671 should not be dismissed with prejudice as time-barred.

## II. F4-2026

"To protect the primary role of state courts in remedying alleged constitutional errors in state criminal proceedings, federal courts will not review a habeas petition unless the prisoner has fairly presented his claims throughout at least one complete round of state-court review, whether on direct appeal of his conviction or in post-conviction proceedings." *Johnson v. Foster*, 786 F.3d 501, 504 (7th Cir. 2015) (citation and quotation marks omitted); *see* 28 U.S.C. § 2254(b)(1)(A). The chronological case summary in F4-2026 reflects that Mr. Price is in the midst of his direct appeal and therefore has not yet exhausted his state court remedies. Mr. Price shall have **through October 28, 2020**, in which to show cause why his challenge to his conviction in F4-2026 should not be dismissed without prejudice so he may exhaust his state-court remedies.

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<sup>1</sup> The Court takes judicial notice of the chronological case summaries of Mr. Price's convictions, which are publicly available at [mycase.in.gov](http://mycase.in.gov).

### III. Conclusion

It appears from the petition that Mr. Price's one-year limitations period has expired as to his challenge to FA-79671, and that he has not exhausted his claims in F4-2026. Therefore, Mr. Price shall have **through October 28, 2020**, in which to show cause why his petition should not be dismissed. Mr. Price shall also have **through October 28, 2020**, in which to either pay the \$5.00 filing fee for this action or demonstrate his financial inability to do so.

**SO ORDERED.**

Date: 10/7/2020



James Patrick Hanlon  
United States District Judge  
Southern District of Indiana

Distribution:

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